

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LORRAINE MCGOVERN	:	CIVIL ACTION
	:	
v.	:	
	:	
ANDREW SAUL, Commissioner of Social Security	:	NO. 19-3926

**MEMORANDUM OF DECISION**

THOMAS J. RUETER  
United States Magistrate Judge

June 17, 2020

Plaintiff, Lorraine McGovern, filed this action pursuant to 42 U.S.C. § 405(g), seeking judicial review of the final decision of the Commissioner of the Social Security Administration (“Commissioner”) denying her claim for disability insurance benefits (“DIB”) under Title II of the Social Security Act (“Act”) and supplemental security income (“SSI”) under Title XVI of the Act.

Plaintiff filed a Brief and Statement of Issues in Support of Request for Review (Doc. 15) (“Pl.’s Br.”), defendant filed a Response to Plaintiff’s Request for Review (Doc. 16) (“Def.’s Br.”), and plaintiff filed a reply thereto (Doc. 17) (“Pl.’s Reply”). Defendant subsequently filed a Status Update (Doc. 20.) For the reasons set forth below, plaintiff’s Request for Review will be **GRANTED** to the extent that the case will be remanded for further proceedings consistent with this opinion.

**I. FACTUAL AND PROCEDURAL HISTORY**

Plaintiff filed applications for SSI and DIB in October 2015 and December 2015, respectively, alleging disability beginning December 2, 2014. (R. 291-99.) Plaintiff’s claims were denied initially; she then filed a request for a hearing. (R. 192-221, 226-36.) A hearing was held on February 2, 2018. (R. 19-101.) In a decision dated July 6, 2018, the ALJ found that

plaintiff was not disabled under the Act. (R. 100-23.) Plaintiff filed a request for review of the ALJ's decision that was denied and the ALJ's decision became the final decision of the Commissioner. (R. 2-8, 287-90.) Plaintiff now seeks judicial review of the ALJ's decision pursuant to 42 U.S.C. § 405(g).

## II. DISCUSSION

In her brief challenging the denial of DIB and SSI, plaintiff argued that substantial evidence does not support the ALJ's decision. In addition, relying on Lucia v. S.E.C., 138 S. Ct. 2044 (2018), plaintiff asserted that her case was improperly adjudicated by an ALJ who was not properly appointed pursuant to the Appointments Clause and that the case should be remanded to a different ALJ who has been constitutionally appointed. (Pl.'s Br. at 3-4; Pl.'s Reply at 1-2.) In the response, defendant averred that substantial evidence supports the decision of the ALJ and that the court should reject plaintiff's Appointments Clause claim because it was not presented to the Social Security Administration ("SSA") during the administrative process. (Def.'s Br. at 7-9.)

In Cirko v. Comm'r of Soc. Sec., 948 F.3d 148, 153 (3d Cir. 2020), the Third Circuit Court of Appeals decided that exhaustion of Appointments Clause claims is not required in the SSA context. As a result, the court directed that the cases before it on consolidated review were to be remanded for new hearings before constitutionally appointed ALJs other than those who presided over the claimants' initial hearings. Id. at 159-60. The Third Circuit denied the Commissioner's petition for rehearing en banc and a final mandate was issued on April 3, 2020.

In the Status Update, defendant informed the court that it will not seek Supreme Court review of the Third Circuit's decision in Cirko, and that the Commissioner does not contend that Cirko does not apply in this case. See Doc. 20 at ¶¶ 2-3.

### III. CONCLUSION

Consistent with the Third Circuit's decision, plaintiff's Request for Review will be granted to the extent that the matter is remanded pursuant to Cirko v. Comm'r of Soc. Sec., 948 F.3d 148 (3d Cir. 2020). The court will not address the merits of plaintiff's remaining arguments.

An appropriate Order accompanies this opinion.

BY THE COURT:

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/s/ Thomas J. Rueter \_\_\_\_\_  
THOMAS J. RUETER  
United States Magistrate Judge